

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE R. BEFFA and DEPARTMENT OF JUSTICE,
FEDERAL PRISONS SYSTEMS, Springfield, MO

*Docket No. 00-1158; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she has greater than seven percent permanent impairment of the right upper extremity, for which she received a schedule award.

On January 28, 1998 appellant, then a 45-year-old registered nurse, filed a notice of traumatic injury and claim for compensation, alleging that she injured her shoulder in the performance of duty. She explained that she was participating in a training class, role-playing as a convict, when other trainees fell on top of her and she tore a ligament in her shoulder. The Office accepted the claim for a right shoulder dislocation. Appellant stopped work on January 28, 1998 and received continuation of pay. She returned to work part time on March 30, 1998, working four hours per day and received appropriate compensation for wage loss. Appellant was approved for full-time work effective April 13, 1998.

Appellant was initially treated for her work injury by Dr. Scott W. McMurray, a Board-certified orthopedic surgeon. He noted that appellant had been thrown to the ground by a large individual while she was participating in a hostage scenario training session on January 28, 1998. Dr. McMurray indicated that appellant had x-ray evidence of slight upride of the right distal clavicle in relationship to the acromion process. Appellant was prescribed medication and an arm sling.

In a February 12, 1998 report, Dr. Aly M. Mohsen, a Board-certified physician in physical medicine and rehabilitation, noted appellant's history of injury on January 28, 1998 and her complaints of pain and weakness in the right arm and shoulder. He reported range of motion findings and performed manual muscle testing. Dr. Mohsen opined that appellant had a probable

acromioclavicular (AC) separation and questionable partial rotator cuff tear due to the work injury. He recommended therapeutic stretching exercises and a course of therapy.

On March 26, 1998 appellant filed a CA-7 claim for a schedule award.

In an April 13, 1998 report, Dr. Ronald Pak, a Board-certified physician in physical medicine and rehabilitation, noted that appellant was seen in consultation with Dr. McMurray. He diagnosed appellant's condition as status post right AC separation/shoulder strain and opined that she could return to work full time so long as she avoided lifting with her right arm and with restrictions of no pulling, pushing or reaching overhead.

In a September 28, 1998 report, Dr. Pak diagnosed that appellant sustained a right AC shoulder joint separation on January 28, 1998. He noted appellant's history of medical treatment for her work injury and opined that appellant had reached maximum medical improvement with restrictions that she avoid prolonged or repetitive right arm overhead motions and lifting overhead with her right arm to 10 pounds. Dr. Pak estimated appellant's permanent impairment of the right extremity to be 20 percent.

In a May 13, 1999 letter, Dr. Daniel D. Zimmerman, the district medical adviser, determined that the report from Dr. Pak was insufficient to support a schedule award and recommended that appellant be examined by a physician skilled in the use of the Fourth Edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).

The Office referred appellant for an evaluation with Dr. Newt Wakemann, a Board-certified orthopedic specialist, scheduled for June 8, 1999. He was given a copy of the medical record and a statement of accepted facts and directed to evaluate appellant's permanent partial impairment of the right upper extremity.

In a report dated July 8, 1999, Dr. Wakeman described appellant's history of injury and recorded physical findings as follows:

"EXAMINATION: Reveals symmetrical shoulder range of motion, measured at 135 degrees forward flexion, 120 degrees abduction, 45 degrees of adduction, 45 degrees extension, 85 degrees external rotation and 90 degrees of internal rotation. She has no atrophy of the arm with 26 centimeter circumference, bilaterally. Grip strength testing, with the dynamometer, reveals 25, 23 and 25 kgs on the left and 27, 28 and 30 kgs on the right. This averages to 24 kgs on the left and 28 kgs on the right."

Dr. Wakeman opined that under the A.M.A., *Guides* appellant had three percent impairment for loss of abduction and three percent impairment for loss of forward flexion for a total of six percent impairment of the upper extremity or four percent whole person impairment. He further stated if deltoid pain, which caused appellant to occasionally drop objects, were considered a Grade 3 deficit, as referenced under Tables 11 and 15, then appellant would have an additional three percent impairment for the right upper extremity or an additional two percent whole person impairment.

The Office forwarded Dr. Wakeman's report to Dr. Zimmerman, the district medical adviser for review. In an August 15, 1999 report, Dr. Zimmerman noted that using the range of motion (ROM) findings reported by Dr. Wakeman in conjunction with Figures 38, 41, and 44 of the A.M.A., *Guides*, the impairment percentage due to ROM and associated pain was forward flexion (135 degrees) or 3 percent impairment, extension (45 degrees) or .5 percent impairment, and abduction (120 degrees) or 3 percent impairment, abduction (45 degrees) or 0 percent impairment, external rotation (85 degrees) or 0 percent impairment and internal rotation (90 degrees) or 0 percent impairment. He noted that the total of 6.5 percent impairment would be rounded off to 7 percent impairment. Dr. Zimmerman also made the following comments:

"Dr. Wakeman found no weakness. He suggests, if pain were to be further considered, that such could be done by using axillary nerve. [Appellant's] reported history and physical examination findings do not warrant additional consideration for pain. She uses no medication for pain. The third chapter of the [A.M.A., *Guides*] on Page 3/13 indicates 'In general, the impairment percents shown in this chapter make allowance for the pain that may accompany the musculoskeletal system impairments.' This would appear in this case to permit no specific additional consideration of [appellant's] pain."

Dr. Zimmerman concluded that appellant had seven percent permanent partial impairment of the right upper extremity based on restricted range of motion caused by her work injury.

In a decision dated August 10, 1999, the Office issued a schedule award for seven percent permanent impairment of the right upper extremity. The period of the award was from January 28 to June 29, 1999.

On August 29, 1999 appellant requested a review of the written record.

Appellant submitted an August 19, 1999 supplemental report by Dr. Pak for consideration by the Office hearing representative. He stated that, while he consulted the A.M.A., *Guides* in deriving his impairment estimate, he "did not feel that [they] accurately reflected the amount of impairment and disability when considering pain, affect on normal activities and potential for future worsening, therefore, a greater estimate was proposed than would be given if just pathoanatomy were considered."

In a November 1, 1999 decision, an Office hearing representative affirmed the Office's August 10, 1999 decision.

The Board finds that appellant has no more than seven percent permanent impairment of the right upper extremity, for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act sets for the number of weeks compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.¹ The Act, however, does not specify the manner in which the

¹ 5 U.S.C. § 8107.

percentage of loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² However, for consistent results and to ensure equal justice for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the instant case, appellant's treating physician, Dr. Pak, assessed appellant's impairment of the right extremity as 20 percent, but he did not note physical findings or discuss his impairment rating in accordance with the A.M.A., *Guides*. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.⁴

Because Pak's opinion was not adequate to determine appellant's entitlement to a schedule award, the Office properly scheduled appellant for a second-opinion evaluation with a Board-certified medical specialist, Dr. Wakeman, who reported physical findings and offered an impairment rating supported by physical findings under the A.M.A., *Guides*. An Office medical adviser reviewed Dr. Wakeman's examination report and determined that appellant sustained a seven percent permanent partial impairment of the right upper extremity based on range of motion findings reported by Dr. Wakeman and in accordance with Figures 38, 41, and 44 of the A.M.A., *Guides*.⁵ Dr. Zimmerman also reasonably explained with reference to the A.M.A., *Guides* why appellant would not be entitled to an additional rating for pain, noting that pain is already a factor within the ratings listed for impairment associated with range of motion and that appellant is not receiving extra measures for pain such as medication.

As the Board finds the opinion of the Office medical adviser to be sufficiently rationalized and based upon a proper application of the physical findings to the A.M.A., *Guides*, the Board concludes that the Office properly issued appellant a schedule award for a seven percent permanent impairment of the right upper extremity.⁶

² *Kenneth E. Leone*, 46 ECAB 133 (1994); *Danniel C. Goings*, 37 ECAB 781 (1986).

³ *Anthony M. Kowal*, 49 ECAB, 222 (1997); *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); see *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Ronald J. Pavlik* 33 ECAB 1596 (1982).

⁵ The Board notes that Figure 38 is on page 38, Figure 41 is on page 44, and Figure 44 is on page 45 of the fourth edition of the A.M.A., *Guides*.

⁶ Although Dr. Pak contends that the A.M.A., *Guides* do not accurately reflect appellant's impairment related to her right upper extremity, the A.M.A., *Guides* have long been the approved standard for evaluating permanent impairment for issuance of a schedule award. See *Quincy E. Malone, supra* 3.

The decisions of the Office of Workers' Compensation Programs dated November 1 and August 10, 1999 are hereby affirmed.

Dated, Washington, DC
March 14, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member